

Senate File 200 - Introduced

SENATE FILE _____
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SF 14)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act providing for the liability of a landowner of land where
2 livestock are kept or an owner of adjoining land for erecting
3 and maintaining a fence, and providing for the assessment of
4 property taxes.
5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
6 TLSB 1290SV 82
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1 1 Section 1. Section 169C.1, Code 2007, is amended by adding
1 2 the following new subsections:
1 3 NEW SUBSECTION. 1A. "Fence" means a fence as described in
1 4 chapter 359A which is lawful and tight as provided in that
1 5 chapter, including but not limited to a partition fence. For
1 6 purposes of this chapter, "fence" includes a fence bordering a
1 7 public road.
1 8 NEW SUBSECTION. 8. "Public road" means a thoroughfare and
1 9 its right-of-way, whether reserved by public ownership or
1 10 easement, for use by the traveling public.
1 11 Sec. 2. NEW SECTION. 169C.6 HABITUAL TRESPASS.
1 12 A habitual trespass occurs when livestock trespasses from
1 13 the land where the livestock are kept onto the land of a
1 14 neighboring landowner or strays from the livestock owner's
1 15 control onto a public road, and on three or more separate
1 16 occasions within the prior twelve-month period the same or
1 17 different livestock kept on that land have trespassed onto the
1 18 land of the same neighboring landowner or strayed from the
1 19 livestock owner's control on the same public road.
1 20 1. The local authority upon its own initiative or upon
1 21 receipt of a complaint shall determine whether livestock are
1 22 trespassing or straying from the livestock owner's control on
1 23 a public road, and make a record of its findings.
1 24 2. a. Once a habitual trespass occurs, a neighboring
1 25 landowner may request that the responsible landowner of the
1 26 land where the trespassing or stray livestock are kept erect
1 27 or maintain a fence on the land. The neighboring landowner
1 28 shall make the request to the responsible landowner in
1 29 writing. The responsible landowner may compel an adjacent
1 30 landowner to contribute to the erection or maintenance of the
1 31 fence as provided in chapter 359A.
1 32 b. If the responsible landowner does not erect or maintain
1 33 a fence within thirty days after receiving the request, the
1 34 neighboring landowner may apply to the fence viewers as
1 35 provided in chapter 359A as if the matter were a controversy
2 1 between the responsible landowner and an adjacent landowner,
2 2 and the matter shall be resolved by an order issued by the
2 3 fence viewers, subject to appeal, as provided in chapter 359A.
2 4 The neighboring landowner shall be a party to the controversy
2 5 as if the neighboring party were an adjacent landowner. The
2 6 neighboring landowner is not liable for erecting or
2 7 maintaining the fence, unless the neighboring landowner is an
2 8 adjacent landowner who is otherwise required to make a
2 9 contribution under chapter 359A.
2 10 3. If the fence is not erected or maintained as required
2 11 in section 359A.6, and upon the written request of the board
2 12 of township trustees, the board of supervisors of the county
2 13 where the fence is to be erected or maintained shall act in
2 14 the same manner as the board of township trustees under that
2 15 section, including by erecting or maintaining the fence,
2 16 ordering payment from a defaulted party, and certifying an

2 17 amount due to the county auditor. The amount due shall
2 18 include the total costs required to erect or maintain the
2 19 fence and a penalty equal to five percent of the total costs.
2 20 The amount shall be placed upon the tax books, and collected
2 21 with interest and penalties after due, in the same manner as
2 22 other unpaid property taxes.

2 23 Sec. 3. NEW SECTION. 359A.22A HABITUAL TRESPASS.

2 24 A landowner of land where livestock are kept or an owner of
2 25 adjoining land shall be liable to erect or maintain a fence if
2 26 the livestock trespasses upon the land of a neighboring
2 27 landowner or strays from the livestock owner's control onto a
2 28 public road, as provided in section 169C.6.

2 29 EXPLANATION

2 30 This bill amends Code chapter 169C, enacted in 1997, which
2 31 provides a cause of action to a landowner or a county or city,
2 32 referred to as a local authority, when livestock is
2 33 trespassing, or is taken into custody after straying from its
2 34 owner's control. The Code chapter provides that a landowner
2 35 or local authority may take custody of livestock if the
3 1 livestock trespasses upon the landowner's land or strays on a
3 2 public road which adjoins the landowner's land, and may bring
3 3 a civil action against the livestock owner for damages caused
3 4 by the livestock and costs associated with the trespass or
3 5 custody.

3 6 The bill provides for habitual trespass when livestock
3 7 trespass from the land where the livestock are kept onto the
3 8 same neighbor's land or the same public road on three or more
3 9 occasions within a 12-month period. The bill provides that a
3 10 local authority (county or city) may make a record of the
3 11 occurrences. After the third occurrence, the neighboring
3 12 landowner may request that the responsible landowner where the
3 13 livestock should be kept erect or maintain a fence on the land
3 14 under the provisions of Code chapter 359A. That chapter
3 15 provides that an adjacent landowner may compel the erection or
3 16 maintenance of a partition fence. Each adjacent landowner is
3 17 liable to contribute an equal amount to pay for the associated
3 18 costs of constructing the fence or making repairs. The bill
3 19 treats the neighboring landowner as an adjacent landowner with
3 20 the right to compel the fence to be constructed or repaired by
3 21 the responsible landowner who presumably could require
3 22 contribution from the adjacent landowner. However, the
3 23 neighboring landowner making the request is not liable for the
3 24 associated costs unless the neighboring landowner is also the
3 25 adjacent landowner. Code chapter 359A provides that the
3 26 township trustees may directly provide for the erection and
3 27 maintenance of a fence if the parties do not act in a timely
3 28 manner, and assess the amount as property taxes. The bill
3 29 provides that the board of township trustees may request that
3 30 the board of supervisors assume this duty. If the board
3 31 constructs or repairs the fence, it may recoup the expenses
3 32 together with a five percent penalty from a defaulted party.
3 33 The amount of the associated costs is placed on the tax books
3 34 and collected as property taxes.

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